

Proposed Rules

Federal Register
Vol. 61, No. 231
Friday, November 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 735

RIN 0560-AE60

Amendments to the Regulations for Cotton Warehouses Under the United States Warehouse Act—Electronic Warehouse Receipts, Insurance Requirements, and Other Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is proposing to amend regulations under the United States Warehouse Act (USWA) to allow warehousemen to issue electronic cotton warehouse receipts for more than one bale (lots) of cotton and clarify other sections as applicable. In 1990 and 1992 the USWA was amended to allow cotton warehousemen to issue cotton warehouse receipts in electronic format. Presently, the applicable regulations require warehousemen, who elect to use electronic warehouse receipts, to issue all receipts as single bale.

DATES: Comments must be received by January 28, 1997, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Warehouse and Inventory Division, Farm Service Agency, Stop 0553, P.O. Box 2415, 5962-South Agriculture Building, Washington, D.C., 20013-2415, telephone 202-720-2121, FAX 202-690-3123.

All submissions will be available for public inspection in room 5962-South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Chief, Licensing Authority Branch, Warehouse and Inventory Division, USDA, FSA, P.O. Box 2415, Stop 0553, Washington, D.C.,

20013-2415; Telephone 202-720-7433 or FAX 202-690-3123.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

The amendments set forth in this proposed rule do not generate any new or revised information collection or record keeping requirements on the public. The existing information collections were previously cleared by OMB and assigned OMB control number 0560-0120.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule, because it has been determined that this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouse operator's part.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Pursuant to the provisions of the USWA, the Secretary has the authority

to license public warehousemen storing cotton (7 U.S.C. 241 *et seq.*). As a part of this licensing authority, the Secretary has the responsibility to regulate the issuance of warehouse receipts through the cotton warehousemen it licenses (7 U.S.C. 260). The USWA was amended in 1990 and 1992. Regulations issued on March 31, 1994, permit the Secretary (through FSA) to allow the cotton warehousemen it licenses to issue cotton warehouse receipts in electronic format.

Presently, all multiple-bale warehouse receipts for cotton are issued as paper warehouse receipts and must contain between 25 and 200 bales. This proposed rule contemplates allowing USWA licensed warehousemen to issue electronic cotton warehouse receipts for more than one bale (lots) of cotton and removes the requirement that all EWR's must be issued as single bale receipts.

Generally, a multiple-bale warehouse receipt consists of 90 bales of cotton but may be issued for other-sized lots, at the warehouseman's discretion. Cotton is accumulated into lots for varying purposes and each region of the cotton belt handles the cotton accumulated into these lots in a different fashion. This proposed rule recognizes these differences and would modify the method by which each bale and lot must be identified and weighed, while still requiring an identification for each bale and lot but allowing for multiple-bale warehouse receipts in electronic format.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and Recordkeeping requirements, Surety bonds, Warehouses.

Proposed Rule

Accordingly, it is proposed that the provisions of 7 CFR part 735 be amended as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for part 735 is revised to read as follows:

Authority: 7 U.S.C. 268.

2. Section 735.2 is amended by revising paragraphs (gg), (hh), and (ii) to read as follows:

§ 735.2 Terms Defined.

* * * * *

(gg) *Provider*. An individual or entity that maintains EWR's in a CFS, meets

the requirements of this part, and has a Provider Agreement with the Service.

(hh) *Provider Agreement.* An agreement entered into between the Secretary and a provider that delineates the provider's responsibilities and defines the relationship between the provider and the Service regarding the provider's maintenance and security of EWR's in the CFS and other requirements of this part.

(ii) *User.* An individual or entity that uses the provider's CFS, but shall not include the Service in its regulatory capacity.

3. Section 735.16 is amended by revising paragraphs (a)(5), (a)(9), (b), and (e) to read as follows:

§ 735.16 Form.

(a) * * *

(5) The tag identifier given to each bale of cotton in accordance with § 735.31;

* * * * *

(9) A statement to the effect that the weight was determined by a weigher licensed under the U.S. Warehouse Act, except that if the weight is not so determined at the request of the depositor, or as permitted in § 735.38, the receipt shall contain a statement to that effect.

(b) Except when an expiration date authorized by the Department is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every non-negotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: *Provided*, That nothing contained in this section shall prohibit a warehouseman from legally selling the cotton when his accrued storage and other charges approach the current market value of the cotton.

* * * * *

(e) If a warehouseman issues a receipt omitting the statement of grade and/or weight on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof, either one or both of the following "Not graded on request of the depositor" or "Not weighed on request of the depositor."

* * * * *

4. Section 735.19 is revised to read as follows:

§ 735.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is

(a) In a form prescribed by the Administrator,

(b) Upon distinctive paper or card stock specified by the Administrator,

(c) Printed by a printer with whom the United States has a subsisting agreement and bond for such printing, and

(d) On paper and/or card stock tinted with ink in the manner prescribed by the agreement under paragraph (c) of this section.

* * * * *

5. Section 735.21 is amended by revising the first sentence to read as follows:

§ 735.21 Return of receipts before delivery of cotton.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the USWA until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a non-negotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written delivery order, properly signed, specifying by bale or tag number, mark, or identifier each bale to be delivered from any receipt or receipts. * * *

6. Section 735.31 is amended by revising the section heading and the first and last sentence to read as follows:

§ 735.31 Tags to be attached to bales.

Each warehouseman shall, upon acceptance of any bale of cotton for storage, unless excepted under § 735.32, immediately attach thereto an identification tag of good quality which shall identify the bale. * * * These tags will contain a number, mark, or identifier and shall be attached in numerical sequence clearly distinguishable from each other.

7. Section 735.32 is amended by revising paragraph (b) and the first two sentences of paragraph (c) to read as follows:

§ 735.32 Arrangement of stored cotton.

* * * * *

(b) If any licensed warehouseman's warehouse receipt is tendered by any one depositor for storage cotton of same grade and staple and in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in lots without reference to visibility of all tags on all bales within any lot, the warehouseman may store such cotton of same grade and staple belonging to the same depositor in lots of 1 or more bales as long as the

lot originally contained 2 or more bales: *Provided, however*, That each bale entering into the lot must bear an individual bale identification, and each lot must be so stored that the number of bales within the lot may be accurately determined.

(c) An individual lot identification shall be affixed by the warehouseman to each lot of cotton which shall show the lot number and the number of bales in the lot. The warehouseman shall also maintain an office record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse. * * *

* * * * *

8. Section 735.33 is amended by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 735.33 System of accounts.

Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Service, which shall show for each bale of cotton the tag number, mark, or identifier mentioned in § 735.31, its weight, its class when required or ascertained, its location, the dates received for, and delivered out of, storage, and the receipts issued and canceled. All such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. * * *

9. Section 735.38 is amended by revising paragraph (a) to read as follows:

§ 735.38 Weighing of cotton; weighing apparatus.

(a) Before being stored in a licensed warehouse, all cotton shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weight shown on a warehouse receipt will be the official warehouse bale or lot weight. Any lot of cotton tendered for storage on which a multiple bale receipt is issued must maintain its individual identity and be preserved during storage and shipment: *Provided*, That if such lot is broken at the warehouse, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

* * * * *

10. Section 735.40 is amended by revising the text beginning with the first sentence "The transferring * * *" and ending with " * * * NOT NEGOTIABLE" to read as follows:

§ 735.40 Excess storage.

* * * * *

(b) * * *

(3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number and weight. The receiving warehouse shall promptly issue a non-negotiable warehouse receipt for each lot of cotton attaching a copy of the corresponding Bill of Lading to each receipt and forward the receipt promptly to the transferring warehouseman (The receiving warehouseman will store each lot intact, attach a header card showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers. Such non-negotiable warehouse receipts shall have printed or stamped in large bold outline letters diagonally across the face the words "NOT NEGOTIABLE." * * *

* * * * *

11. Section 735.44 is revised to read as follows:

§ 735.44 Fire loss to be reported.

If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately the occurrence of such fire and the extent of damage to the Administrator.

12. Section 735.47 is revised to read as follows:

§ 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. All certificates and supporting documentation that form a basis of any receipt issued by the warehouseman shall be retained in the records of the licensed warehouseman until December 31 of the year following the year in which the receipt based on such certificates or supporting documentation is canceled.

* * * * *

13. Section 735.49 is amended by revising the second sentence to read as follows:

§ 735.49 Samples; drawing and marking; how.

* * * Each sample shall be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn and the date of sampling. * * *

14. Section 735.77 is amended by revising paragraph (c) and by adding "and" to the end of paragraph (f) to read as follows:

§ 735.77 Contents of complaint.

* * * * *

(c) The name and location of the licensed warehouse in which the cotton is stored, and the tag number, mark, or identifier assigned to each bale of cotton involved in the appeal, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor,

* * * * *

15. Section 735.101 is amended by removing paragraph (b), redesignating paragraphs (c) through (q) as paragraphs (b) through (p), and revising newly redesignated paragraph (j) to read as follows:

§ 735.101 Electronic warehouse receipts.

* * * * *

(j) Prior to issuing EWR's, each warehouseman shall request and receive from the Service a range of consecutive warehouse receipt numbers which the warehouseman shall use for the EWR's it issues.

* * * * *

16. Section 735.102 is amended by revising paragraphs (b), (d) (4), and (f) to read as follows:

§ 735.102 Provider requirements and standards for applicants.

* * * * *

(b) *User fee charges.* Providers shall pay to the Service user fees set by the Service and announced prior to April of each calendar year.

* * * * *

(d) * * *

(4) The provider or the Service may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to the termination.

* * * * *

(f) *Application form.* Application for a provider agreement shall be made to the Secretary on forms prescribed and furnished by the Service.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,
Administrator, Farm Service Agency.
[FR Doc. 96-30318 Filed 11-27-96; 8:45 am]

BILLING CODE 3410-05-P

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO-368-A25, AO-380-A15; DA-95-01]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders and Termination of Proceeding With Respect to Proposals To Amend the Southwestern Idaho-Eastern Oregon Federal Milk Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision adds two counties to the Pacific Northwest milk marketing area and modifies the component pricing provisions of the order. Other proposed amendments addressed at the hearing, including all of those pertaining to the Southwestern Idaho-Eastern Oregon Federal milk order, will not be considered further in this proceeding. The issues involved in those proposals will be addressed in the process of restructuring the Federal milk orders pursuant to the 1996 Farm Bill. Dairy farmer cooperatives will be polled to determine whether dairy farmers favor issuance of the Pacific Northwest order as amended.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in